

APPLICATION FOR JUDICIAL OFFICE

The Honorable Debra R. Phelan
Yavapai County Superior Court, Division Pro Tem A

SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name:

Debra Rene Phelan

2. Have you ever used or been known by any other name? Yes If so, state name:

Debra Rene Saunders (maiden name)

3. Office Address:

Camp Verde Courthouse
2840 N. Commonwealth Drive
Division Pro Tem A
Camp Verde, Arizona 86322

4. How long have you lived in Arizona? What is your home zip code?

Since birth (1975). 86305.

5. Identify the county you reside in and the years of your residency.

Maricopa County, 1975 to 1994
Coconino County, 1994 to 1997
Maricopa County, 1997 to 2006
Yavapai County, 2006 to Present

6. If appointed, will you be 30 years old before taking office? ✓ yes no

If appointed, will you be younger than age 65 at the time of appointment? ✓
yes no

7. List your present and any former political party registrations and approximate dates of each:

Current: Republican

Registration history:

March 2014 to Present – Republican

June 2007 – Democrat

December 2006 – Independent

October 1993 – Republican

8. Gender: **Female**

Race/Ethnicity: **Caucasian**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Northern Arizona University – August 1994 to May 1997 – *Bachelor of Science*, received May 1997

Arizona State University College of Law – August 1999 to May 2002 – *Juris Doctor*, received May, 2002

10. List major and minor fields of study and extracurricular activities.

Major field of study: *Criminal Justice*

Minor field of study: *Psychology*

Extracurricular Activities while at Arizona State University College of Law:

Pro Bono Club – President,

CASA (Court Appointed Special Advocate)

Extracurricular Activities while at Northern Arizona University:

**Crisis Scene Counselor/Victim Advocate – Coconino County
Victim/Witness Program**

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Completed Bachelor of Science in three years, carrying an excessive amount of credits every semester for which I had to receive school approval.

Graduated *Summa Cum Laude*, Northern Arizona University.

Recipient of *Pro Bono Award* for providing over 100 hours of *pro bono* service during law school, Arizona State University College of Law.

Two time recipient of *Pedrick Scholar* award for receiving highest grade in class, Arizona State University College of Law.

Selected for prestigious *Legal Intern* position with the *Arizona State Legislature, House Rules Committee*, Arizona State University College of Law.

Selected as *Legal Intern* for *United States District Court, The Honorable Lawrence O. Anderson, Magistrate*, Arizona State University College of Law.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

State of Arizona, Admitted October, 2002.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **NO** If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **NO** If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER

DATES

LOCATION

Yavapai County Superior Court	January, 2019	Yavapai County, AZ
The Law Office of Debra R. Phelan	October, 2010 to December 2018	Prescott, AZ
The Law Office of Chester B. McLaughlin	2009 to October 2010	Prescott, AZ
Walker & Walker Estate Attorneys	2008 to 2009	Prescott, AZ
The Carman Law Firm	2007 to 2008	Prescott, AZ
BARBRI Bar Review	2001 to 2008	Maricopa County and Yavapai County, AZ
Law School 1999 to 2001		
Maricopa County Attorneys' Office	1997 to 1999	Maricopa County

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

Partners and Associates Within Last Five Years:

None

Judges Currently on the Bench in Court in Which I Serve:

**The Honorable David L. Mackey, Yavapai County Superior Court
The Honorable Michael R. Bluff, Yavapai County Superior Court
The Honorable Tina R. Ainley, Yavapai County Superior Court
The Honorable Cele Hancock, Yavapai County Superior Court
The Honorable Joseph P. Goldstein, Yavapai County Superior Court
The Honorable Anna C. Young, Yavapai County Superior Court
The Honorable Patricia A. Trebesch, Yavapai County Superior Court
The Honorable John Napper, Yavapai County Superior Court
The Honorable Christopher Kottke, Yavapai County Superior Court**

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

Nature of Law Practice for Last Five Years:

My practice focused on juvenile law, mostly dependency proceedings, which included termination of parental rights, adoptions and guardianships (60%). I also practiced domestic relations litigation, serving as Court Appointed Best Interest Attorney, Family Court Advisor and/or Parent Coordinator in domestic relations cases (30%). Additionally, I served as court-appointed counsel for wards of the court in guardianship/conservatorship proceedings in probate court (10%).

17. List other areas of law in which you have practiced.

I have also practiced Elder Law, focusing on long-term care planning, estate planning, probate litigation, guardianship/conservatorship litigation, and securing public benefits for applicants. I have practiced civil law, including Orders of Protection and Injunctions Against Harassment.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

No areas of specialization.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

Serving as a Judge Pro Tem for the Superior Court, I regularly compose Orders and Rulings. As an estate planning attorney, I regularly drafted estate planning documents. As a domestic relations attorney, I drafted dissolution decrees, property settlement agreements and parenting plans. As a Legal Intern for the Arizona House Rules Committee, I performed constitutional analysis on pending legislation and drafted memorandums regarding the constitutionality of proposed legislation. As a Legal Intern for the Arizona Supreme Court, I revised the Foster Care Review Board Administrative Code Manuals. Finally, as a Law Clerk with the City of Surprise, Arizona, I assisted in drafting text amendments to the city code.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **NO**. If so, state:

- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.
- b. The approximate number of these matters in which you appeared as:

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

21. Have you handled any matters that have been arbitrated or mediated? **YES**
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: **200**

Chief Counsel: _____

Associate Counsel: _____

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

1. P1300SV20170003

Date of Case: December 2015 to September 2017

Counsel Involved:

Lynn Harris	Guardian ad Litem for the Child Email: harrislawfirm@msn.com Telephone: (480)773-0005
Jeff Zurbriggin	Attorney for the Father Email: Jeff@jzfamilylaw.com Telephone: (602)631-4444
Ingrid Hughes	Attorney for the Father Email: ingridhugheslaw@gmail.com Telephone: (928)554-2634
Debra R. Phelan	Attorney for Grandparents

Substance of Case: It was a privately filed juvenile dependency matter that later became a private termination of parental rights, filed by grandparents.

Significant Issues in the Case: UCCJEA analysis, two states having probate and child custody proceedings within each state. There was also a legal father and biological father involved and the mother was deceased. Grandparents had the child for years and eventually resolved to settle the case agreeing, to their heartbreak, to allow the

child to return to the physical custody of her biological father.

2. P1300JD201800003

Date of Case: January 2018 to December 2018

Counsel Involved:

David Knox	Assistant Attorney General Email: David.Knox@azag.gov Telephone: (928)759-1714
Ingrid Hughes	Guardian ad Litem for the Children Email: ingridhugheslaw@gmail.com Telephone: (928)554-2634
Amy Young	Attorney for the Father Email: amy.young@yavapai.us Telephone: (928)777-7374
Debra R. Phelan	Attorney for the Mother

Substance of Case: It was a juvenile dependency filed by the Arizona Department of Child Safety, later becoming a termination of parental rights case.

Significant Issues in the Case: Present in the case were issues of domestic violence, substance abuse, sexual abuse and mental health. I was able to assist my client in accepting the termination of her parental rights as an inevitable outcome and assist her in conveying her wishes regarding the best interests of the children to the father of her children as well as to the adoptive parents and the court.

3. P1300DO201800544

Date of Case: June 2018 to December 2018

Counsel Involved:

Bryan Shaw	Attorney for Respondent Email: shaw@slgadmin.com Telephone: (928)445-0030
Debra Phelan	Attorney for Petitioner

Substance of Case: It was Dissolution of a long-term marriage with children.

Significant Issues in the Case: The parties had a fairly contentious relationship and the children were refusing contact with one parent. Opposing counsel and I were able to negotiate an amicable resolution to the entire case and the parties signed a Consent Decree

23. Have you represented clients in litigation in Federal or state trial courts? **State**

Trial Courts. If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: _____

State Courts of Record: **390**

Municipal/Justice Courts: _____

The approximate percentage of those cases which have been:

Civil: **390**

Criminal: _____

The approximate number of those cases in which you were:

Sole Counsel: **385**

Chief Counsel: _____

Associate Counsel: **5**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **3**

You argued a motion described above **3**

You made a contested court appearance (other than as set forth in the above response)

You negotiated a settlement: **300**

The court rendered judgment after trial: **21**

A jury rendered a verdict: **0**

The number of cases you have taken to trial:

Limited jurisdiction court	0
Superior court	21
Federal district court	0
Jury	0

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts? **NO.** If so, state:

The approximate number of your appeals which have been:

Civil: _____
 Criminal: _____
 Other: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief:

Personally in oral argument:

25. Have you served as a judicial law clerk or staff attorney to a court? **YES.** If so, identify the court, judge, and the dates of service and describe your role.

United States District Court, The Honorable Lawrence O. Anderson, August 2001 to December, 2001. I reviewed and responded to inmate 42 U.S. Code §1983 claims.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

1. **P1300JD201800054**

Date of Case: June 2018 to December 2018

**Court in Which Case was Heard: Yavapai County Superior Court,
Division IV – *The Honorable Anna C. Young***

Counsel Involved:

David Knox	Assistant Attorney General Email: David.Knox@azag.gov Telephone: (928)759-1714
Ingrid Hughes	Guardian ad Litem for the Child Email: ingridhugheslaw@gmail.com Telephone: (928)554-2634
Debra R. Phelan	Attorney for the Father

Substance of Case: The Arizona Department of Child Safety filed a dependency matter and ultimately moved for a termination of parental rights.

Significant Issues in the Case: Present in the case were issues of neglect, substance abuse, and mental health. My client continued to contest the dependency, and we took the case to trial on August 6, 2018. The state prevailed.

2. P1300JD201700066

Date of Case: July 2017 to December 2017

**Court in Which Case was Heard: Yavapai County Superior Court,
Division IV – *The Honorable Anna C. Young***

Counsel Involved:

David Knox	Assistant Attorney General Email: David.Knox@azag.gov Telephone: (928)759-1714
Amy Alexander	Attorney for the Child Email: amy@alexanderlegal.cc Telephone: (602)619-0000
Debra R. Phelan	Attorney for the Mother

Substance of Case: The Arizona Department of Child Safety filed a dependency matter which my client did not contest but objected to the grounds for the dependency.

Significant Issues in the Case: In this case, my client had adopted her niece and nephew from another state through the children being placed

in foster care out of state. Following adoption, the children began disliking their adoptive placement, and the Arizona Department of Child Safety eventually took custody when the adoptive parents could no longer control the children. My client objected to the allegations of neglect posited by the Arizona Department of Child Safety. Accordingly, we took the issue of dependency based on abuse and neglect as alleged by the State to trial, arguing that the Court should find a dependency based on the parents' inability to meet the child's needs instead of based on abuse and neglect, thereby avoiding a finding of abuse and neglect that would cause my client to be placed on the Child Abuse Registry. We prevailed.

3. P1300DO201400272

Date of Case: April 2014 to December 2014

**Court in Which Case was Heard: Yavapai County Superior Court,
Division V – *The Honorable Cele Hancock***

Counsel Involved:

Bryan Shaw

Attorney for Respondent

Email: shaw@sigadmin.com

Telephone: (928)445-0030

Debra R. Phelan

Attorney for Petitioner

Substance of Case: This case was a Dissolution of Non-Covenant Marriage with Minor Children.

Significant Issues in the Case: The parties shared three minor children and were unable to resolve the issues of parenting time, legal decision-making, spousal maintenance, child support and distribution of the parties' property and debts. The parties proceeded to trial on all issues. The Court awarded joint legal decision-making and nearly equal parenting time.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

I was selected as the Yavapai County Superior Court Pro Tem A Judge on

November 21, 2018. I began my term January 7, 2019. I am a full-time Superior Court Judge assigned to the Verde Valley Judicial District. My assigned caseload is approximately 450 cases. I preside over 100% of all domestic relations cases (excluding IV-D cases), all Orders of Protection and Injunctions Against Harassment, all civil cases including injunctions (excluding sexually violent persons cases), all forcible entry and detainer actions, all probate matters, including all emergency probate requests, all requests for deferral and/or waiver of fees, all juvenile delinquency cases, all juvenile Adolescent Recovery Court hearings and Juvenile Healthy Boundaries Court hearings, and all private termination of parental rights cases. I also serve as back-up for the Yavapai County Presiding Juvenile Court Judge in all adoptions, delinquency, dependency and private termination of parental rights cases for the Prescott Judicial District. I conduct settlement conferences, jury and court trials, and contested hearings. I also have administrative responsibility for operation of the judicial division including supervisory accountability including scheduling and assigning work, quality control, and management of staff.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

1. V1300GC201880019

Date of Case: January, 2019 to May, 2019

**Court in Which Case was Heard: Yavapai County Superior Court,
Division Pro Tem A – *The Honorable Debra R. Phelan***

Counsel Involved:

Jeffrey Sparks	Attorney for Grandparents Email: arizonalawyer@cableone.net Telephone: (520)541-1179
Lillian Harris	Attorney for Grandmother Email: lillianeharris@aol.com Telephone: (732)842-3980

Substance of Case: It was a guardianship of a juvenile which later also added a 3rd party grandparent visitation case.

Significant Issues in the Case: UCCJEA analysis was required in this case and there were three cases regarding the same child in Yavapai

County, with an additional case in the State of Colorado. My division assumed the case when the case was convoluted and needed procedural corrections. I addressed all three cases, conducted UCCJEA conferences and dismissed the matters as I ruled Colorado had jurisdiction over the child.

2. V1300GC201780177

Date of Case: January, 2019 to May, 2019

**Court in Which Case was Heard: Yavapai County Superior Court,
Division Pro Tem A – *The Honorable Debra R. Phelan***

Counsel Involved:

Benjamin DeGuire	Attorney for Respondent Email: benjamin.deguire@deguirelaw.com Telephone: (928)773-9100
Victoria Ames	Attorney for Petitioner Email: VAmes@ARTEMiSLawFirm.com Telephone: (480)948-7825

Substance of Case: It was a post-decree Motion for Contempt and Enforcement.

Significant Issues in the Case: The parties had disputes regarding unpaid spousal maintenance and enforcement of the parties' Property Settlement Agreement.

3. V1300DO201880175

Date of Case: January, 2019 to April, 2019

**Court in Which Case was Heard: Yavapai County Superior Court,
Division Pro Tem A – *The Honorable Debra R. Phelan***

Counsel Involved:

Paul Schlegel	Attorney for Petitioner Email: schlegellaw@sslw.us Telephone: (928)646-7348
Dennis Bayless	Attorney for Respondent Email: Baylesslaw@gmail.com Telephone: (928)639-0121

Substance of Case: It was a Petition to Establish Paternity, Legal Decision-Making, Parenting Time and Child Support.

Significant Issues in the Case: Respondent had just been released from the Arizona Department of Corrections and had a history of substance abuse but was, at the time of the contested hearing, doing well in recovery. Respondent wanted equal decision-making authority and equal parenting time. I had to determine what was in the child's best interests, weighing Respondent's constitutional right to parenting time with her child against all of the factors listed in A.R.S. §25-403.

29. Describe any additional professional experience you would like to bring to the Governor's attention.

My professional background has provided me a wide breadth of experience. I have worked at all levels of government, from the city, to the county, the state, and up to the federal district court. I have worked at the Arizona State Legislature in the Rules Committee and participated in the legislative process. I worked at the Arizona Supreme Court modifying the administrative code and participated in the administrative aspect of the judicial branch. As an attorney, working in justice court and superior court, I have been in the courtroom so much it is difficult to encapsulate. I have a diverse background, not only in the areas of law in which I have practiced, but also in the types of clients with whom I have worked.

I have extensive experience working with clients struggling with mental illness, drug addiction, and childhood trauma. I have seen the justice system through the perspective of both the victims and the defendants. My knowledge, personal skills, ability to listen, knowledge of the law, and my sense of firm fairness were all refined in my years of practice as an attorney and are being used daily as I preside over my diverse caseload as Yavapai County Superior Court Judge Pro Tem A.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **NO**. If so, give details, including dates.
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **NO**. If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are appointed? **Not applicable**. If not,

explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **YES**. If not, explain.
33. Have you paid all state, federal and local taxes when due? **YES**. If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? **NO**. If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **NO**. If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **NO**. If so, identify the nature of the case, your role, the court, and the ultimate disposition.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **NO**. If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **NO**. If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **NO**. If so, provide details.
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **NO**.

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not applicable**.
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. **NONE**.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **NONE.**
44. List and describe any sanctions imposed upon you by any court. **NONE.**
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **NO.** If so, in each case, state in detail the circumstances and the outcome.
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **NO.** If your answer is "Yes," explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **NO.** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **NO.** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **NO.** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles? **NO.** If so, list with the citations and dates.
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **YES.** If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **YES.** If so, describe.

I have presented many lectures during my legal career. Most recently, I participate monthly in two speaking engagements offered through my courtroom division: Divorce 101 and Law Talk. Divorce 101 is a monthly program that is being offered for the first time in the Verde Valley Judicial District because I am the first judge who has been willing to provide the program to the litigants in the Verde Valley Judicial District. I facilitate the free, monthly program in my courtroom with the assistance of Court Administration and the involvement of volunteers from the Clerk's Office and local attorneys. We provide an overview of the Divorce/Dissolution process.

I also speak monthly at Law Talk, a program I started in March 2019. Local victim-advocacy groups and other social-service providers come to my courtroom during the lunch hour where I provide information regarding legal topics in which they have an interest.

In February 2019, I spoke at the Verde Valley Bar Association meeting, presenting information to local attorneys regarding the different ways litigants may obtain third-party custody of a child.

In 2018, I presented with a fellow attorney on dissolution/custody litigation processes to the Yavapai Family Advocacy Center.

Since 2014, I have been a regular presenter at the Arizona Supreme Court New Dependency Attorney Training, teaching a class on Parent Representation. I have presented in Maricopa, Yavapai, and Coconino Counties and continue to do so even after my appointment to the bench.

I presented at the Yavapai County Juvenile Court Orientation for Dependent Youth (CODY) program in 2015 and 2016. I provided information to attendees regarding the dependency process and parent involvement in court proceedings.

I have also been a presenter at Parent Education with Yavapai County Superior Court from 2016 to 2017, lecturing on the legal process of divorce/custody proceedings.

In 2010, I presented a lecture titled "Long Term Care Planning and Public Benefits" to the Northern Arizona Council of Governments meeting.

Also in 2010, I presented to the Northern Arizona VA Health Care System a similar topic: Arizona Long Term Care Qualification and VA Benefits—How They Overlap.

53. List memberships and activities in professional organizations, including offices held and dates.

Republican Women of Prescott:	Member since 2018
National Association of Counsel for Children	Member since 2017
Yavapai County Bar Association	Member since 2007
Taylor Hicks Elementary School PTA	President, 2011 to 2012
Taylor Hicks Elementary School PTA	Secretary, 2010 to 2011
The Cottages at Lakeside HOA	President, 2008 to 2012

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **YES**

I served as the Arizona High School Mock Trial Regional Coordinator for three years (2015 to 2018) through The Arizona Bar Foundation for Legal Services & Education.

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

Regarding pro bono legal services, I was a contract attorney with the Yavapai Family Advocacy Center and provided free or low-cost legal representation in domestic relations court to victims receiving services through the Yavapai Family Advocacy Center.

Additionally, as a substantive part of my practice, I regularly provided pro bono representation to clients in juvenile court, domestic relations court, and guardianship/conservatorship proceedings. I have always made this a commitment in my legal work and from the day I opened my own practice to the day I closed it, I worked tirelessly providing pro bono representation to clients in need of legal assistance but who had no means with which to obtain them.

54. Describe the nature and dates of any relevant community or public service you have performed.

During my legal career, I served as the Arizona High School Mock Trial Regional Coordinator for three years (from 2015 to 2018). I took on this role when a local teacher, Brenda Lee, came to the Yavapai County Bar Association meeting asking for an attorney to step forward and take on the task, as no one in the community had been willing to do so for many years and the competition was struggling. I contacted Ms. Lee after the meeting and volunteered. With very little instruction or guidance, I organized the entire event of over 100 students, hosting it at the Superior Court in our county. It was a large undertaking, and it was an incredible success. I continued to organize and oversee the competition for the next two years, with each year's competition being well-organized and efficient. When I was appointed as a

Superior Court Judge, I knew I would not be able to devote the time and attention needed to the competition. I could have contacted the state and stepped down, without any further effort. However, I knew that if I did that, the schools—and ultimately the students—would be left without someone to lead the event. I therefore looked to my local community, found a replacement willing to take-over overseeing the competition, and handed it off. I felt it was my duty to do so.

I was also a Board Member for the Yavapai CASA for Kids Foundation from 2015 to 2018, overseeing for several years the Gift Card Program, resigning only due to my appointment as a Superior Court Judge.

I have always been an active volunteer in my children's' schools, starting from 2006 and continuing today. I worked as a classroom volunteer every year, starting in 2006 and continuing until 2012, going into the classroom weekly to facilitate pull-out reading groups. I also served as a Character Counts Instructor from 2008 to 2013, going into the classroom monthly and teaching lessons on "The Pillars of Character" used by the elementary schools for character building. I even implemented a civics component to the lesson plans, creating a script for a "mock trial" and having the children act out a courtroom trial experience in elementary school.

I worked as the PTA secretary and eventual President of my children's elementary school. Additionally, from 2012 to 2015, I coordinated quarterly teacher-appreciation luncheons for the school, which became monthly from 2016 to 2017, where I continued to coordinate and work at the luncheon events.

From 2009 to 2012, I served as the President of my neighborhood's HOA, resigning only when moving from the neighborhood to a different area of the city.

I have been an active volunteer in my church for my lifetime—so much so that I cannot list all the volunteer work I have performed for my church and local community. Currently I serve as the music director for our children's services each week. I lead the children in singing and teaching them through song (2018 to present). I have also served as the President of the youth programs, overseeing all the activities of the children's religious programs (2011 to 2013). I have been the secretary for the women's religious programs (2014 to 2016) and began thereafter serving as the President of the women's religious programs from 2017 to 2018. In my church service, I have visited the sick, taken countless meals into families in need, delivered food boxes, cleaned houses, assisted in organizing funeral services, and spent countless hours visiting families and children in need of counsel and comfort.

I served as a Cub Scout Leader from 2010 to 2013, leading weekly den

meetings and volunteering each summer at Cub Scout Day Camp for local cub scout participates.

As a law student, I volunteered as a Court Appointed Special Advocate (CASA) and served as the President of the Pro Bono Board at Arizona State College of Law, wherein I completed over 100 hours of pro bono legal service during law school (August 1999 through May 2002).

Prior to law school, as a Crime Victim Advocate with the Maricopa County Attorney's Office, I volunteered as the Maricopa County Attorney's Office representative at monthly *Parents of Murdered Children Support Group* meetings. I also volunteered to lead the *Kids in Court* program—a program designed to prepare children victims of crime to testify in court trials.

As a college student (1994 to 1997), I was a volunteer crisis counselor with Coconino County Victim/Witness services, where I provided crisis counseling at crime scenes to victims, witnesses, and their families. I also volunteered with Campus Republicans—attending events and encouraging students to vote register to vote.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

Selected as *Yavapai County Superior Court Judge Pro Tem* – selected November 21, 2018.

***Top Pro Bono Attorney* – Arizona State Bar Association – received June, 2017.**

***Pro Bono Award* – Arizona State University College of Law – Received May 2002 for completing over 100 hours of pro bono service during law school.**

Selected as *Legal Intern* for Arizona House Rules Committee, Arizona House of Representatives, Spring 2002

***Pedrick Scholar Award* – two time recipient, Arizona State University College of Law, for top grade in Employment Law and Immigration Law courses.**

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

Yavapai County Superior Court Judge – Pro Tem A – began January 7, 2019.

Have you ever been removed or resigned from office before your term expired? ____
If so, explain. **NO**

Have you voted in all general elections held during the last 10 years? **YES** If not,

explain.

57. Describe any interests outside the practice of law that you would like to bring to the Governor's attention.

My interests outside of the practice of law that would be relevant to my application for Division IV Superior Court Judge are as follows:

I am an advocate for children and families. I have spent my adult life serving my community to help children and families thrive. I spend my free time and talents supporting local schools, religious organizations, and community service agencies working to better the lives of the children and families in my community.

I am also a dedicated wife and mother and believe in supporting families in succeeding and flourishing.

Additionally, I am a devoted, active member of my faith. I believe in the freedom of religion and honor the privilege we have in our country to worship how, where, and what we choose. While my religious convictions create my commitment to be honest, act with integrity, and to treat everyone with decency and respect, my religious beliefs are also private, personal, and I do not impose my viewpoints on others.

My interests also focus on staying informed on local, statewide, and national issues. I keep apprised of political issues and am an informed voter. I am not, however, active in any political movements, as I do not believe that a judicial officer's place is to be politically motivated or driven.

I am an active runner, completing the Whiskey Row 10k in Prescott, Arizona in 1997, the half-marathon in 2013, and the full marathon in 2017. I relish the outdoors in our beautiful state.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying?
YES.

ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

First, I am an Arizona Native. Born and raised in Maricopa County, I grew up

in the west valley, the daughter of a Compliance Officer with Valley National Bank and a stay-at-home mother. I am a product of Arizona public schools and have lived my entire life within the State of Arizona. I take great pride in being a Native Arizonan.

Second, my heritage traces back to Thomas Jefferson, something I knew as a young child and a fact which has shaped my view of the world. I have always been interested in the law, the principles of justice, and protecting the constitution.

Third, my commitment to public service is long-standing. My husband of twenty years has worked as a public employee for his entire career, first at the Arizona Supreme Court and now in Yavapai County, Arizona. My own law career has been dedicated to protecting those who cannot protect themselves, from crime victims to children and the elderly. My income through my law firm was significantly funded through my contract with the Yavapai County Public Defender's Office, which were tax-payer funds, and through providing low-cost legal representation to clients in need. My husband and I have never been focused on making large salaries—we have been public servants and have the ethics and mindset to serve the community.

Fourth, I belong to an extended family devoted to public service. My own father participated in the Army National Guard for seven years during his time as a young father. My husband's grandfather enlisted in the United States Army in 1942 during World War II. His son, my father-in-law, spent his own career in the United States Air Force, retiring as a Chief Master Sergeant, while my mother-in-law worked as an administrator in Head Start in the valley for many years, then moving on to work as a social worker at the United States Department of Veterans' Affairs. I have one nephew honorably serving in the United States Navy and a second nephew who recently enlisted and is leaving for Boot Camp in a few weeks. A third nephew is a retired Sergeant in the United States Army. He fought in Operation Enduring Freedom in Afghanistan, receiving the Purple Heart. He is currently a police officer for The City of Prescott. My niece is the City Clerk for the City of Flagstaff, and my sister-in-law is a Crime Victim Advocate with the Pima County Attorney's Office. For generations before me, and those rising after me, my family—both nuclear and extended—is a family dedicated to serving our country.

Fifth, I conduct my personal and professional life in a manner that is complimentary of public service. I do not, and have not, participated in any form of social media. I do not drink alcohol, smoke, use any substances, nor do I involve myself in any activities which could in any way be interpreted, or misinterpreted, as improper of a public servant. I do not take part in any activities that are affiliated with extremist viewpoints nor do I personally take positions on any polarizing issues. I am always guarded in my activities and

social engagements and conduct myself in a dignified manner so as to avoid even the appearance of impropriety in any circumstance.

Lastly, my life experiences have given me the steadiness, commitment, integrity, and fortitude to make an outstanding Superior Court Judge. I have compassion for those struggling with mental-health issues and addiction, while at the same time, I can hold people accountable for their choices. I have the temperament, life-experience, knowledge, and firmness to be an excellent judicial officer.

60. Provide any additional information relative to your qualifications you would like to bring to the Governor's attention.

I would like Governor Ducey to look at my record since being appointed as Yavapai County Superior Court Pro Tem A. I manage a heavy caseload with a demanding schedule and diverse calendar. I am managing it well—taking cases to adjudication quickly and using court resources efficiently. I am the first Judge to provide Divorce 101 in the Verde Valley Judicial District, and one of my priorities when taking over as Judge Pro Tem A in the Verde Valley Judicial District was to reach out to local social workers and advocacy groups to find out how the court could more effectively serve the local community with better access to justice. I have spent my time in the months I have been serving as a Superior Court Judge working—and working hard. My character and quality showed in my law practice, it shows in my time on the bench, and it will continue to show if I am selected for the permanent position of Division IV Judge of the Yavapai County Superior Court.

I would also offer to Governor Ducey the conviction with which I took the Oath of Office as Judge Pro Tem, swearing to uphold the Arizona and United States Constitution. I believe in the separation of powers and understand my role as part of the judiciary. It is my personal belief that the purpose of a Superior Court Judge is to apply the law, not to create law. I am a firm believer in this and have taken great efforts while learning the role of Superior Court Judge over the last few months to ensure that I am applying the law to the facts before me and not going further in making findings and conclusions that reach outside of the law. I am also keenly aware of the fact that that the decisions I make in the courtroom have a direct impact on the lives of the litigants in my cases. It is a responsibility I take very seriously.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **YES**. If not, explain.
62. Attach a brief statement explaining why you are seeking this position.

I am seeking the position of Division IV of the Yavapai County Superior Court for several reasons. First, the job of Superior Court Judge is the most challenging, rewarding, and satisfying job I have ever had. I could not love the job more. Judge Pro Tem is, by definition, a temporary position. While our county has approved and funded two Pro Tem positions for many years, it is not a guarantee. My desire is to be a Division Judge, so that funding is not an issue every year for retention of two full-time Pro Tem positions in our county.

Second, I want to serve on committees through the Administrative Office of the Courts (AOC). As soon as I began as a Superior Court Judge in January 2019, I started looking into what committees in which I could serve through the AOC. Most committees have positions for Division Judges, and I believe I could serve on more committees or on a more long-term basis if I were a Division Judge. I have applied to serve on the Committee on the Impact of Domestic Violence on the Courts (CIDVC) and am awaiting Justice Bales' decision on whether I will be appointed. I hope to be—and already attended a meeting as a proxy for The Honorable Patricia Trebesch, the current Division IV Judge in our county who is retiring and creating the vacancy for which I am applying. If I were the Division IV Judge, I believe my application for selection on the CIDVC, or another committee, would be better received.

In short, I would like the longevity that the Division IV Superior Court position provides so that I may continue, and even increase, my ability to serve the community as a Superior Court Judge in Yavapai County.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.
64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. **Not applicable.**

1 The Law Office of Debra R. Phelan, PLLC
2 100 E. Union Street
3 Prescott, Arizona 86303
4 (928) 445-4810
5 drp.lawoffice@gmail.com
6 Bar ID# 021974
7 Guardian ad Litem for the Children

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

In the Matter of:

Case No.: **REDACTED**

REDACTED

**MOTION TO REQUEST FURTHER
SERVICES FOR PARENTS**

Minor Children Under the Age of 18

Expedited Ruling Requested

(Assigned to The Honorable Anna C. Young)

Undersigned counsel, as Guardian ad Litem for the Children, requests an Order that Father **REDACTED** and the Mother **REDACTED** engage in further services that were not ordered previously by the court. Undersigned Guardian ad Litem requests this Order on an expedited basis.

On April 9, 2018, Undersigned Guardian ad Litem attended a Child and Family Team Meeting at 10:00 am where both parents, along with the ongoing Department of Child Safety case worker and service providers from West Yavapai Guidance Clinic, were in attendance. Based on the parents' behaviors observed at that meeting, Undersigned Guardian began looking into the status of the criminal investigation regarding the injuries sustained by **CHILD A**. Undersigned Guardian ad Litem then investigated extensively into the matter and learned the following information:

1) Father **REDACTED** was arrested for assault per domestic violence and disorderly conduct per domestic violence, with Mother **REDACTED** as the listed victim, on 3/20/18.

2) Mother **REDACTED** went to the justice court when Father **REDACTED** was being released from jail on 3/21/2018 and asked the court to not enter a no-contact order between her and Father **REDACTED**, which the court signed.

3) Father **REDACTED** currently has pending Assault per Domestic Violence and Disorderly Conduct per Domestic Violence charges with a Pre-Trial Conference on the charges May 8, 2018 @9am. (Mayer Justice Court **REDACTED**).

4) Father **REDACTED** had two drug convictions in the last year. (Peoria Municipal Court M-**REDACTED** and Prescott Valley Justice Court M-**REDACTED**).

5) The Yavapai County Sheriff's Office investigation of how the child **REDACTED**'s ribs were broken remains open and ongoing. The detective is waiting for Father **REDACTED** and Mother **REDACTED** to submit to polygraph examinations. Both initially agreed to, but both are now saying they want to talk to their lawyers before agreeing to submit to the polygraphs.

1 Prior to learning the above information in the afternoon of April 9, 2018, Undersigned
2 Guardian ad Litem had been in agreement with the services the Court had previously ordered for
3 the parents. Undersigned Guardian ad Litem had even agreed to Father **REDACTED** having
4 supervised visitation with **CHILD B** who is not his child, as reflected in the mediation
5 agreement dated March 30, 2018.
6

7 However, upon learning the above listed information late on April 9, 2018, which notably
8 was not disclosed at all by the parents, and upon obtaining and disclosing the police report and
9 release terms for Father **REDACTED** on April 10, 2018, Undersigned Guardian ad Litem is
10 requesting the Court order the following additional services for the parents:
11

12 **Mother REDACTED**

13 (1) Engage in domestic violence education.

14 **Father REDACTED**

15 (1) Engage in domestic violence education.

16 (2) Engage in anger management education/counseling.

17 (3) Submit to a hair follicle test within one week of the Court's order.

18 (4) Provide urinalysis testing randomly 8-10 times a month, observed, with ETG.

19 (5) Observe Family Treatment Court.

20 (6) Submit to a Substance Abuse Assessment and follow all recommendations.
21

22 Also, Undersigned Guardian ad Litem was in agreement that Father **REDACTED** may
23 have supervised visitation with **CHILD B** who is not his child, as reflected in the mediation
24 agreement dated March 30, 2018. Undersigned Guardian ad Litem is no longer in agreement
25 with that at the present time and requests that the Court not approve the provision in the
26
27
28

1 Original filed this _____ day of
2 April, 2018, to:

3 Clerk of the Superior Court
4 11000 Prescott Lakes Parkway
5 Prescott, AZ 86305

6 Copy of the foregoing delivered electronically
7 this _____ day of April 10, 2018, to:

8 The Honorable Anna C. Young
9 1100 Prescott Lakes Parkway
10 Prescott, AZ 86301

11 Copies of the foregoing delivered electronically
12 this _____ day of April, 2018, to:

13 **Attorney C Redacted**
14 Attorney for the Father REDACTED

15 **Attorney B Redacted**
16 Attorney for the Mother REDACTED

17 **DCS Caseworker A Redacted**
18 Ongoing DCS Unit Supervisor

19 **Attorney A Redacted**
20 Assistant Attorney General

21 CASA Office

22 BY: _____

1 The Law Office of Debra R. Phelan, PLLC
2 100 E. Union Street
3 Prescott, Arizona 86303
4 (928) 445-4810
5 drp.lawoffice@gmail.com
6 Bar ID# 021974
7 Attorney for the Mother

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

7 In the Matter of:

8
9 **REDACTED**

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11 Minor Children Under the Age of 18

Case No.: **REDACTED**

**MOTION TO RECONSIDER COURT'S
ORDER TO PERMIT ADES TO SUSPEND
MOTHER'S VISITATION**

Expedited Ruling Requested

(Assigned to The Honorable Anna C. Young)

13
14 The Mother, by and through undersigned counsel, hereby requests the court reconsider
15 and reverse the court's prior order that the Arizona Department of Economic Security has
16 discretion to stop visits between the Mother and the Children if the Mother missed a urinalyses
17 test subsequent to the hearing on July 23, 2013.

18
19 **I. PROCEDURAL HISTORY**

20 On July 23, 2013, this court held a Report and Review hearing in the above captioned
21 case. At that hearing, ADES informed the court that the Mother had missed a number of
22 urinalyses tests and was not compliant with services. ADES therefore requested discretion to
23 suspend the Mother's visitation if the Mother missed any more urinalysis tests. ADES presented
24 no evidence that the Mother's missed urinalysis tests created a risk of harm to the Children.
25 Furthermore, the court did not make any findings regarding how the Mother's missed urinalyses
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1 tests created any risk of harm to her Children. Yet the court granted ADES discretion to suspend
2 Mother's visitation anyway if the Mother missed any more urinalysis tests.

3 On August 22, 2013, the Mother did not make it to the laboratory in time to provide a
4 urine sample and therefore missed her urinalyses test for that day. The following day, August
5 23, 2013, ADES exercised the discretion given to them by this court and suspended all of the
6 Mother's contact with the Children.
7

8 **II. APPLICABLE LAW and ADES POLICY**

9 A parent's right to the companionship, care, custody, and management of his or her
10 children is a fundamental, constitutionally protected right. See *Michael M. v. ADES*, 42 P.3d
11 1163, 202 Ariz. 198 (Ariz. App., 2002). Deprivation of a parent's right to associate with his or
12 her children is particularly crucial after a dependent child has been removed from the family. 42
13 P.3d 1163, at 1165. *A parent should be denied the right of visitation only under extraordinary*
14 *circumstances.* 42 P.3d 1163, at 1165 (emphasis added).
15

16 Arizona Revised Statutes, upon which ADES' policy is based, clearly states that visitation
17 between a child in ADES' custody and the child's parent should only be restricted if the court
18 finds visitation is not in the child's best interests. (See A.R.S. §8-513(C)). ADES' own policy
19 manual, Chapter 3, Section 10, further states that:
20

21 "The department may recommend that visitation or contact between a child in an
22 out-of-home care and the child's parents...be restricted *only when visitation is*
23 *contrary to the child's safety and well-being*" and that "[v]isitation...*shall not be*
24 *used as a reward or as a punishment for the child or any family member.*"
25
26 (emphasis added).
27
28

1 **III. ARGUMENT**

2 In the present case, prior to the July 23, 2013 hearing, the Mother had been missing many
3 of her court-ordered services. That fact is not in dispute. However, there is no evidence that the
4 Mother's behavior during her prior visits with her Children posed a risk of harm to the Children
5 in any way, nor has there been any evidence that the Mother poses a risk of harm to the Children
6 if the Mother misses a urinalysis test. The court made no findings to this effect. Based on the
7 lack of evidence and lack of findings by this court, it appears that ADES' request to have the
8 discretion to suspend the Mother's contact with the Children if the Mother missed any more
9 urinalysis tests was nothing more than a punishment for the Mother's non-compliance with
10 services.
11

12 If the court has any doubt about the punishment element of ADES' decision to suspend
13 the Mother's visitation simply for missing a urinalyses, the Mother urges the court to consider
14 ADES' statement at the Child Family Team meeting held on September 4, 2013 that ADES will
15 consider reinstating the Mother's visitations only after the Mother provides 30 days of clean,
16 timely urinalysis tests. Again, there has not been any evidence presented that if the Mother
17 misses a urinalysis test then she poses a risk of harm to her Children; and certainly not sufficient
18 enough to justify suspension of her visitation.
19

20 As this court is aware, parents can completely disobey every order of this court and
21 refuse to engage in services offered by ADES. Doing so prevents the parent from achieving
22 reunification. However, that does not and should not prevent the parent from having visitation
23 with that parent's child(ren). A parent cannot be inappropriate during visits. A parent cannot
24 show up for visits under the influence of substances. However, absent presenting a risk of harm
25 to the child(ren), and absent the court finding that continued visitation would not be in the child's
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1 best interests based upon such a showing, then a parent has a constitutional right to visitation
2 with their child, whether the parent is compliant with services or not.

3 **IV. CONCLUSION AND REQUEST FOR RELIEF**

4 The Mother urges the court to reconsider the court's prior order that ADES has the
5 discretion to suspend the Mother's visitation with the Children for missing a urinalyses test. The
6 Mother further requests the court return the Mother's visitation with her Children to the same
7 visitation orders that were in place prior to the July 23, 2013 hearing.
8

9 Undersigned counsel has notified all parties of the present motion. Attorney A
10 REDACTED, Attorney for the Children, and Attorney B REDACTED, Attorney for the Father,
11 take no position. Attorney C REDACTED, Assistant Attorney General, states ADES' position is
12 that ADES is following the court's order by suspending the Mother's visitation.
13

14 RESPECTULLY SUBMITTED this 5th day of September, 2013.

15
16
17 _____
Debra R. Phelan
Attorney for the Mother

18 Original filed this 5th day of
19 September, 2013, to:

20 Clerk of the Superior Court
Yavapai County Juvenile Justice Center
21 Prescott, AZ 86301

22 Copies of the foregoing hand-delivered
this 5th day of September, 2013, to:

23 Division I, The Honorable Anna C. Young
Yavapai County Juvenile Justice Center
24 Prescott, AZ 86301

25 Copy of the foregoing hand-delivered to
Juvenile Justice Center Courthouse Box
26 this 5th day of September, 2013, to:

27 Attorney A REDACTED
Attorney for the Children
28

1 Attorney B REDACTED
Attorney for the Father

2 Attorney C REDACTED
Assistant Attorney General

3 CASA Office
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1 The Law Office of Debra R. Phelan, PLLC
2 100 E. Union Street
3 Prescott, Arizona 86303
4 (928) 445-4810
5 drp.lawoffice@gmail.com
6 Bar ID# 021974
7 Attorney for Petitioner

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

<p>8 In the Matter of:</p> <p>9 10 REDACTED, 11 Petitioner</p> <p>12 v</p> <p>13 REDACTED, 14 Respondent.</p>	<p>Case No: REDACTED</p> <p>PETITIONER’S RESPONSE TO RESPONDENT’S MOTIONS TO SET ASIDE DEFAULT DECREE AND MOTION TO STAY JUDGMENT</p> <p>(Assigned to the Honorable Don Stevens)</p>
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Petitioner, by and through undersigned counsel, hereby Responds to Respondent’s Motion to Set Aside Default Decree and separate Motion to Stay Judgment, received by undersigned counsel on October 16, 2017.

Rule 44(C) of the Arizona Rules of Family Law Procedure states that “for good cause shown” the court may set aside an entry of default pursuant to Rule 85. Rule 85(C) of the Arizona Rules of Family Law Procedure states that upon motion and upon such terms as are just, the court *may* relieve a party from a final judgment for reasons of (among other things) mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation or other misconduct of an adverse party, or “any other reason justifying relief from the operation of the judgment.” *See* Rule 85(C)(1)(a) to (f), Arizona Rules of Family Law Procedure, emphasis added.

1 In the present case, Respondent has filed a Motion to Set Aside the Default Decree signed
2 by this Court on September 29, 2017 and recorded by the Clerk on October 2, 2017. In his
3 motion to set aside, Respondent raises several convoluted arguments as a basis for his request for
4 relief, most of which can be reduced to the arguments that Respondent feels that since August
5 28, 2017, Respondent feels his Power of Attorney, Petitioner, undersigned counsel and Morgan
6 Stanley have conspired to keep Respondent from monies to which Respondent feels entitled.
7

8 None of the allegations raised by Respondent are true. Yet even if they were,
9 Respondent raises no arguments in his motion to set aside that the default judgement, which was
10 effective in May, 2017, was obtained by any means other than completely lawful processes,
11 methods, and in full compliance with statutes and court rules.
12

13 Petitioner filed her Petition for Dissolution of Marriage without Children on April 28,
14 2017. Petitioner completed service on Respondent on May 4, 2017 via process server.
15 Respondent failed to file a Reply or otherwise defend his position in the timeframe required by
16 law. Petitioner then filed a timely Application for Entry of Default on May 26, 2017. Petitioner
17 completed all of these steps while Respondent was in the Yavapai County Detention Center. As
18 the time for Default had already tolled, Petitioner began taking steps to finalize the Default
19 Decree and to undertake the process of drafting the Qualified Domestic Relations Orders needed
20 to execute the legal transfer of assets pursuant to the Default Decree. Petitioner then lodged the
21 Default Decree on September 7, 2017 which the Court timely approved and signed.
22

23 Respondent could have taken steps to defend his position from May 4, 2017 to the time
24 default was entered, yet he did not. Respondent did nothing until quite recently when
25 Respondent began filing excessive motions in an attempt to litigate the matter; too little, too late.
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1 Respondent has raised no good cause nor legal basis to set aside the Default Decree.
2 Respondent has also not raised any reason justifying relief from the operation of the judgment, as
3 found in Rule 85(C)(1)(f), Arizona Rules of Family Law Procedure. Respondent pled guilty to
4 multiple sex offenses against children and is serving what is in reality a life sentence in the
5 Arizona Department of Corrections. Fairness and equity justify Petitioner receiving every single
6 asset owned by Respondent. However, Petitioner generously left to Respondent a sum of over
7 \$125,000.00 per the Default Decree. This money is far more than Respondent will need living a
8 life sentence in prison, and is certainly more than fairness and equity would award to
9 Respondent, particularly given the crimes committed by Respondent and who his victims were.
10

11 The ability for the Court to aside a default judgment in Rules 44 and Rule 85 are both
12 permissive when the Court feels good cause has been shown to do so. *See* Arizona Rules of
13 Family Law Procedure. There is no mandatory requirement for the Court to set aside a Default
14 Decree, and the facts in the present case absolutely do not demonstrate good cause why the Court
15 should alter its prior orders.
16

17 Petitioner has obtained the Default Judgment in full compliance with the law, and
18 Respondent has failed to raise any basis to set aside the judgment. Petitioner requests the Court
19 deny Respondent's Motion to Set Aside and to confirm the Default Decree previously signed by
20 this Court.
21

22 Finally, Petitioner files this Response in a timely fashion. Petitioner has received a
23 plethora of motions and pleadings in the mail from Respondent in the last few weeks.
24 Undersigned Counsel received Respondent's Motion to Set Aside and a separate Motion to Stay
25 Judgment on October 16, 2017.
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RESPECTFULLY SUBMITTED this ____ day of October, 2017.

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Debra R. Phelan
Attorney for Petitioner

Original filed this ____ day of
_____, 2017, to:

Clerk of the Superior Court
120 S. Cortez Street
Prescott, AZ 86303

Copy of the foregoing hand-delivered
This ____ day of October, 2017, to:

The Honorable Don Stevens
Yavapai County Superior Court

Copy of the foregoing mailed
this ____ day of _____, 2017, to:

RESPONDENT REDACTED
Arizona Department of Corrections Inmate #Redacted
Eymann Prison
PO Box 3300
Florence, Arizona 85132

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>REDACTED Petitioner,</p> <p>and</p> <p>REDACTED, Respondent</p>	<p>Case No. REDACTED</p> <p style="text-align: center;">ORDER AND RULING</p>	
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<p>HONORABLE DEBRA R. PHELAN</p> <p>DIVISION PRO TEM A</p>	<p>BY: Nicole Bizardi, Judicial Assistant</p> <p>DATE: March 29, 2019</p>
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The parties were married December 24, 1986. Petitioner filed a *Petition for Dissolution of Non-Covenant Marriage Without Minor Children* on October 5, 2018. Petitioner requested Spousal Maintenance in her Petition. Respondent filed his *Response* to the *Petition* on November 15, 2018 and objected to Petitioner’s request for Spousal Maintenance. The parties reached resolution on the distribution of the marital property and debts, confirmed in a hearing before the Honorable Christopher L. Kottke, on January 4, 2019, but continued to disagree on Petitioner’s request for Spousal Maintenance.

The parties therefore proceeded to a contested hearing on March 18, 2019 regarding Petitioner’s request for Spousal Maintenance. At the conclusion of the hearing, the Court took the matter Under Advisement. The Court, having conducted an evidentiary hearing on March 18, 2019, taking testimony from both parties, receiving and reviewing the exhibits offered by the parties and admitted into evidence, reviewing the Court’s file, and applying the facts in the case to the applicable law, specifically Arizona Revised Statute §25-319, the Court finds as follows:

1. *That Petitioner has raised a claim for an award of Spousal Maintenance.*

2. *That Petitioner lacks sufficient property, including property apportioned to Petitioner, to provide for Petitioner’s reasonable needs.* Testimony established that Petitioner moved out of the marital home and has been living with Petitioner’s adult son, who has been paying Petitioner’s bills and expenses. Petitioner and Respondent both testified that Respondent has not given Petitioner any money to support herself since Petitioner moved out of the marital home in July, 2018. Respondent testified that if Petitioner had asked him for money, Respondent would have given Petitioner money. The Court notes that Petitioner *did* ask for money by requesting Spousal Maintenance in the *Petition* she filed October 5, 2018, which Respondent objected to in his *Response*.

Respondent testified that once the marital home sells, that the parties will each receive half of the proceeds from the sale of the parties’ real property. Respondent believes each party will receive approximately \$135,000.00. Respondent asserted that once Petitioner receives her half of the proceeds from the sale of the real property, along with receiving \$800 per month from Respondent’s social security, that Petitioner will then be self-sufficient as Petitioner would then have \$800 per month income plus savings.

Petitioner testified that Petitioner intends to begin collecting income from Respondent’s social security in a year when Respondent turns sixty-two years old and that Petitioner, having not worked outside the home for

the last thirty-two years, will receive no social security individually. Petitioner testified that her expectation from the sale of the marital home will be receiving \$60,000 to possibly \$100,000.00, not the \$135,000.00 estimated by Respondent.

Even if Petitioner is able to receive \$800 per month when Respondent turns sixty two years old, and even if Petitioner receives a lump sum of funds from the sale of the marital home, Petitioner will still need to gain independent housing, provide for her own medical insurance as her coverage will stop flowing through Respondent's employment once the dissolution decree is final, and she will need to provide for herself for the rest of her life. The Court does not find that Petitioner will have sufficient property to be self-sufficient, even after distribution of the funds from the sale of the marital home and/or receipt of Petitioner's portion of Respondent's social security.

3. *That Petitioner is unable to be self-sufficient through appropriate employment.* Testimony established that Petitioner has not been gainfully employed since prior to her marriage to Respondent, dating back thirty-two years. Petitioner graduated high school but does not have any trade certificates, vocational training, or college education upon which she can rely to obtain employment. Testimony from both parties also established that Petitioner has several health conditions that make Petitioner's activities of daily living challenging. The Court finds that given Petitioner's current age, lack of work history, and health limitations, Petitioner's ability to obtain gainful employment to allow Petitioner to be self-sufficient is highly unlikely, if not impossible.

4. *That Petitioner has made a significant contribution to the education, training, vocational skills, career or earning ability of Respondent.* Petitioner and Respondent testified that during the duration of the parties' marriage, Petitioner was a homemaker who tended to the upkeep of the home, child raising, and supported Respondent in working full-time as the sole source of income for the family.

5. *That Petitioner and Respondent had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.* The parties have been married for thirty-two years; a timeframe easily establishing a marriage of long-duration. Petitioner is currently sixty-five years old, an age the Court finds renders Petitioner unlikely to gain employment adequate for Petitioner to be self-sufficient.

The Court has weighed the evidence presented, as well as the pleadings in the Court file, applied the law to the facts of this case, and finds that Petitioner has met her burden of proof to prevail on her claim of Spousal Maintenance.

To compute the appropriate amount of Spousal Maintenance, as well as the duration of the award, the Court has considered the factors in Arizona Revised Statute §25-319(B), giving particular weight to the following factors as testified to and detailed in the parties' Affidavits of Financial Information:

- The duration of the marriage.
- Petitioner's age, lack of employment history, lack of earning ability in the work force, and physical condition.
- Respondent's ability sought to meet his own needs while meeting those of Petitioner.
- The comparative financial resources of the spouses, including their comparative earning abilities in the labor market and the resources available to both spouses, particularly Respondent retaining sole access to his

401K, the value of which is unknown to the Court as the value is not listed in any of Respondent's financial information.

- The financial resources Petitioner, including marital property apportioned to Petitioner in the division of the parties' property and debts, and Petitioner's ability to meet her own needs independently.
- And finally, the cost for Petitioner to obtain health insurance after the marriage is dissolved.

Having weighed the evidence against all factors, the COURT AWARDS PETITIONER an award of Spousal Maintenance of **\$800.00 per month beginning April, 2019**. Respondent shall make monthly payments to Petitioner by the last day of each month, the first payment being due the last day of April, 2019, and continuing until Petitioner either remarries or is deceased.

Payments shall be paid through direct deposit from Respondent to Petitioner, arranged by Respondent.

Regarding past Spousal Maintenance, Petitioner requested Spousal Maintenance in her original Petition for Dissolution of Marriage filed on October 5, 2018. Respondent objected to Petitioner's claim for Spousal Maintenance in Respondent's Response filed November 15, 2018, and again in Respondent's Proposed Resolution Statement filed on December 14, 2018. However, in Respondent's Proposed Resolution Statement filed February 15, 2019, Respondent stated he agreed that he should pay Petitioner \$300.00 per month Spousal Maintenance, but only until the marital house sells.

The Court therefore ORDERS that Petitioner is awarded an amount of **\$1,800.00** (\$300 per month for six months—October, 2018 through March, 2019). Respondent shall make monthly payments of \$200.00 per month, beginning April, 2019, until the balance is paid in full to Petitioner. These payments shall be on the same schedule as the regular monthly payments of \$800.00 per month Spousal Maintenance that will begin April, 2019. Therefore, Respondent will be paying \$1,000.00 per month (\$800 for current Spousal Maintenance plus \$200 for unpaid past Spousal Maintenance) from April, 2019 until the balance of \$1,800.00 is paid in full to Petitioner. Thereafter Respondent will be paying only \$800.00 per month for current Spousal Maintenance pursuant to this Order.

As provided in Arizona Revised Statutes §25-319, the Court maintains continuing jurisdiction over the issue of maintenance for the period of time maintenance is awarded.

This Order and Judgment is Final pursuant to Rule 78(c) of the Arizona Rules of Family Law Procedure.

DATED this _____ day of April, 2019.

HON. DEBRA R. PHELAN
Judge of the Superior Court

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>REDACTED, Petitioner,</p> <p>and</p> <p>REDACTED, Respondent</p>	<p>Case No. REDACTED</p> <p>ORDER AND RULING</p>	
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<p>HONORABLE DEBRA R. PHELAN</p> <p>DIVISION PRO TEM A</p>	<p>BY: Nicole Bizardi, Judicial Assistant</p> <p>DATE: March 26, 2019</p>
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This matter came before the court on Respondent’s *Petition for Contempt and to Enforce Judgment and Decree of Dissolution of Marriage*, filed on October 1, 2018. Petitioner filed a Response to the *Petition* and the Court conducted an evidentiary hearing on February 25, 2019 and March 25, 2019. After reviewing the Court file, the admitted exhibits, and taking testimony from the parties, and considering all evidence and arguments presented by counsel for the parties, the Court finds as follows:

Procedural History

The parties signed a Separation and Property Settlement Agreement on September 28, 2015, hereinafter “The Property Agreement.” The Property Agreement was drafted by attorneys for Husband and were the result of negotiations between the parties culminating in a Rule 69 Settlement Agreement. (See The Property Agreement, page 12.) The Property Agreement stated it was drafted in contemplation of the parties’ filing a Petition for Dissolution of Marriage within the eighteen months following the execution of The Property Agreement.

The terms of The Property Agreement were that Petitioner agreed to pay Respondent Spousal Maintenance of \$1,600.00 per month for a period of “approximately 18 months, beginning upon the execution of the agreement and terminating on April 30, 2017.” (See The Property Agreement, page 8.) The Property Agreement also stated that “If Husband breaches the Property Settlement Agreement, he will indemnify and hold Wife financially harmless from any damages, costs, expenses, liabilities and /or obligations resulting from such breach, including reasonable attorney’s fees.” (See The Property Agreement, page 5.) The Property Agreement stated also that no changes and/or modifications to the terms of the Agreement should be binding unless they are agreed to in writing by both parties. (See The Property Agreement, page 3.)

The Property Agreement further stated that the agreement was fair and equitable and that the parties requested the Court approve it in any subsequent proceeding. (See The Property Agreement, page 3.)

Also on September 28, 2015, the parties signed a Time Sharing, Relocation and Support Agreement, hereinafter “Time Sharing Agreement,” wherein Petitioner agreed to pay Respondent \$2,000.00 per month child support.

On May 3, 2017, Petitioner filed a Petition for Dissolution of Marriage with Minor Children.

On January 11, 2018, the parties conducted a Settlement Conference and reached a Rule 69 Agreement in open court, confirming the terms of The Property Agreement executed by the parties on September 28, 2015. As agreed to during the Settlement Conference on January 11, 2018, Counsel for Respondent lodged a Judgment and Decree of Dissolution of Marriage, incorporating The Property Agreement and Time Sharing Agreement signed by the parties on September 28, 2015, but ordering a new amount for Child Support, which was designated at a downward deviation of \$942.10 per month, effective February 1, 2018. The Court signed the Judgment and Decree of Dissolution of Marriage on March 7, 2018, and it was stamped by the Clerk of the Court on that same date.

Presently Pending Motions

On October 1, 2018, Respondent filed a *Petition for Contempt and to Enforce Judgment and Decree of Dissolution of Marriage*. This is the only pleading pending before the Court. Petitioner has never filed a Petition to Modify Child Support or any other request. Only Respondent's *Petition* is pending. Therefore, the only issues before the Court are (1) is Petitioner in contempt for failing to follow the contractual terms of the Decree of Dissolution, and by incorporation, The Property Agreement and Time Sharing Agreement, and (2) is Respondent entitled to the relief requested in her *Petition*.

Spousal Maintenance

The Court finds that Respondent has proven her case that the parties executed a valid contract, created at arm's length, drafted by the attorneys for Petitioner, wherein Petitioner was contractually obligated to pay \$1,600.00 per month Spousal Maintenance to Respondent as well as \$2,000.00 per month.

Regarding the Spousal Maintenance payments, both Petitioner and Respondent testified that Petitioner paid Respondent \$1,600.00 per month from the signing of The Property Agreement on September 28, 2015 through August, 2016, when Petitioner made his last Spousal Maintenance Payment. Therefore, the Court finds Respondent has proven that Petitioner is in breach of The Property Agreement in an amount of \$12,800.00.

Petitioner argued that he was not able to afford the Spousal Maintenance payments after August, 2016 when Petitioner's work hours were cut back and his income drastically changed from what it was in September, 2015 when Petitioner originally entered The Property Agreement. The Court does not find Petitioner's justification for non-payment as a defense to the non-payment. The Court finds no provisions in The Property Agreement permitting either party to unilaterally change the terms of The Property Agreement. IN fact, The Property Agreement expressly states that the terms of The Property Agreement may only be modified if the modification is agreed to in writing signed by both parties. Thus, if Petitioner wanted to modify the terms of The Property Agreement, he could have done so by renegotiating the terms of The Property Agreement with Respondent and making the modification binding through terms, in writing, signed by both parties. Petitioner did not do so. He simply decided to stop paying.

Petitioner had ample opportunity to raise the issue of his change in income prior to the Court signing the *Judgment and Decree of Dissolution of Marriage* on March 7, 2018 and incorporating into the final Court Orders for this case The Property Agreement. Instead of raising the issue, Petitioner remained silent and remained in breach of his contractual obligations under The Property Agreement until Respondent began enforcement proceedings by filing her *Petition for Contempt and to Enforce Judgment and Decree of Dissolution of Marriage*, filed on October 1, 2018. The Court is unpersuaded by Petitioner's argument that because his employment changed in August, 2016 that he was unilaterally able to modify the terms of The Property Agreement and stop paying Spousal Maintenance to Respondent.

Child Support

Regarding the Child Support, both Petitioner and Respondent testified that Petitioner paid Respondent \$2,000.00 per month from the signing of The Time Sharing Agreement on September, 28, 2015 through August, 2016, when Petitioner ceased making the agreed upon Child Support Payments. Therefore, the Court finds Respondent has proven that Petitioner is in breach of The Time Sharing Agreement.

Petitioner argued that after his work hours were cut back in August of 2016, and therefore he was unable to pay the Child Support he had agreed to pay in The Time Sharing Agreement executed on September 28, 2015. Petitioner did continue to make the payments of \$2,000.00 per month to Respondent after August, 2016 (but only paying \$500.00 in August, 2016) until approximately September of 2017. From September 2017 until August, 2018, Petitioner paid amounts close to \$2,000.00 per month in Child Support, but not always \$2,000.00 per month. The Court finds therefor that Petitioner is in breach of the terms of The Time Sharing Agreement in an amount of \$4,200.00.

Petitioner argued at the hearing that while Petitioner contracted in The Time Sharing Agreement to pay \$2,000.00 per month in Child Support, that when the case reached final resolution through the Court signing the *Judgment and Decree of Dissolution of Marriage* on March 7, 2018, the calculation of Child Support in the final orders was that Petitioner would pay \$942.10 per month instead of the \$2,000.00 Petitioner had agreed to pay back in September, 2015 through The Time Sharing Agreement. The Court finds this logic flawed.

The Time Sharing Agreement is a valid, binding contract, separate and apart from the Child Support Order entered by the Court on March 7, 2018. The Time Sharing Agreement did not provide a provision wherein either party could unilaterally modify the terms of The Time Sharing Agreement, nor did The Time Sharing Agreement have an “end date” for the Child Support payment of \$2,000.00 paid by Petitioner to Respondent. Petitioner was under a contractual obligation to pay \$2,000.00 per month in Child Support until the Court entered the Child Support Order, which the Court did, through the Decree, which set a new amount of Child Support at a *downward deviation* of \$942.10 per month effective February 1, 2018.

The Court does not agree with the rationale that Petitioner was “overpaying” child support of \$2,000.00 from the execution of The Time Sharing Agreement through the Court signing the *Judgment and Decree of Dissolution of Marriage* on March 7, 2018. \$2,000.00 per month is what Petitioner drafted through his attorneys and agreed to pay in The Time Sharing Agreement, and \$2,000.00 was what Petitioner was contractually obligated to pay.

The Court also does not agree with Petitioner’s argument that under A.R.S. §25-317 that the Court has the authority to alter or modify the terms of The Separation Agreement at this point. The Court interprets the Court’s ability to weigh the fairness and equity of The Separation Agreement existed at the time that the Court entered the Decree on March 7, 2018. The Court does not read §25-317 to permit the Court the ability to do anything at this point other than enforce the terms of The Separation Agreement, which is clearly outlined in A.R.S. §25-317(E), by stating that, “[t]erms of the agreement set forth or incorporated by reference in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt.”

The Court notes that the Court *does not find* that Petitioner’s breach of his contractual duties under The Separation Agreement or The Time Sharing Agreement were done for malicious reasons. The Court believes Petitioner that his income changed in August, 2016 and commends Petitioner for continuing to make payments of Child Support, even when the payments were not the full \$2,000.00 per month, from September, 2015 through January, 2018.

Ruling

THE COURT FINDS that Respondent has proven that Petitioner knew of his contractual obligations pursuant to The Separation Agreement and The Time Sharing Agreement to pay both Spousal Maintenance and Child Support to Respondent, that Petitioner had notice of the Court's incorporation of The Separation Agreement and The Time Sharing Agreement in the final *Decree*, that Petitioner had notice of the Court's orders, and that Petitioner willfully disregarded his obligation to make the payments and failed to comply with the Court's order.

THEREFORE THE COURT GRANTS Respondent's *Petition for Contempt and to Enforce Judgment and Decree of Dissolution of Marriage*, filed on October 1, 2018.

THE COURT ENTERS a Judgment against Petitioner for unpaid Spousal Maintenance in the amount of **\$12,800.00** for a period of **eight months**, from September, 2016 to April, 2017.

THE COURT ENTERS a Judgment against Petitioner for unpaid Child Support in the amount of **\$4,200.00** for a period of **nineteen months**, from July, 2016 to February, 2018.

THE COURT ENTERS a Judgment against Petitioner for Respondent's costs and attorney's fees for the enforcement action. Petitioner shall pay the attorney's fees for Respondent's attorney directly to Respondent's counsel. The costs for the enforcement action shall be added to the final judgment, which shall be paid through the Clearinghouse.

THE COURT DENIES Respondent's request for interest on the principal balance.

THE COURT ORDERS Petitioner shall make monthly payments of **\$1,000.00 per month, beginning May, 2019** for the balance owed for Spousal Maintenance and Child Support (\$12,800.00 plus \$4,200.00) of **\$17,000.00**.

THE COURT DIRECTS Counsel for Respondent to submit a China Doll Affidavit reflecting his attorney's fees as well as Respondent's costs for the enforcement action. Counsel for Respondent shall also lodge a Form of Order and Judgment, along with the China Doll Affidavit for Attorney's Fees, with the Court within thirty days of today's date, for the Court's signature.

DATED this ____ day of March, 2019.

HON. DEBRA R. PHELAN
Judge of the Superior Court